

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF GENERAL SERVICES  
DIVISION OF ENGINEERING AND BUILDINGS  
IN CO-OPERATION WITH  
DIVISION OF PURCHASES AND SUPPLY  
P.O. BOX 1199  
RICHMOND, VA. 23218-1199**

**NOTICE OF CONTRACT AWARD**

1. DATE.....April 1, 2003
2. COMMODITY NAME.....Energy Services  
Consultants/Contractors
3. CONTRACT NUMBER.....C300020-0
4. CONTRACT PERIOD.....April 1, 2003 through March 31, 2005  
(Renewable)
5. AUTHORIZED USERS.....All State Agencies and Public Bodies
6. CONTRACTORS.....See Quick Reference  
Guide to Contractors
7. TERMS.....Net 30 days
8. DELIVERY.....As requested
9. F.O.B.....Not applicable
10. FOR FURTHER CONTRACT INFORMATION CONTACT: Shirley McNutt  
(804)786-4538  
e-mail: [smcnutt@dgs.state.va.us](mailto:smcnutt@dgs.state.va.us)

Notice: This Notice of Contract Award is being provided to you to announce the vendors to whom the award was issued. You may begin using the Contractors immediately using the information provided herein. Any questions concerning the provisions of the contract should be directed to the Contract Officer listed above. This contract is optional use.

By: \_\_\_\_\_  
Shirley McNutt, VCCO, VCO  
Contract Officer

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## **CODE OF VIRGINIA SECTION FOR ENERGY PERFORMANCE CONTRACTING**

§ 11-34.3. Energy Performance-Based Contract Procedures; required contract provisions.

A. Any contracting entity may enter into an energy performance-based contract with an energy performance contractor to significantly reduce energy costs to a level established by the public body or operating costs of a facility through one or more energy conservation or operational efficiency measures.

B. The energy performance contractor shall be selected through competitive sealed bidding or competitive negotiation as defined in § 11-37. The evaluation of the request for proposal shall analyze the estimates of all costs of installation, maintenance, repairs, debt service, post installation project monitoring and reporting.

C. Before entering into a contract for energy conservation measures and facility technology infrastructure upgrades and modernization measures, the contracting entity shall require the performance contractor to provide a payment and performance bond relating to the installation of energy conservation measures and facility technology infrastructure upgrades and modernization measures in the amount the contracting entity finds reasonable and necessary to protect its interests.

D. Prior to the design and installation of the energy conservation measure, the contracting entity shall obtain from the energy performance contractor a report disclosing all costs associated with the energy conservation measure and providing an estimate of the amount of the energy cost savings. After reviewing the report, the contracting entity may enter into an energy performance-based contract if it finds (i) the amount the entity would spend on the energy conservation measures and facility and technology infrastructure upgrades and modernization measures recommended in the report will not exceed the amount to be saved in energy and operation costs more than twelve years from the date of installation, based on life-cycle costing calculations, if the recommendations in the report were followed and (ii) the energy performance contractor provides a written guarantee that the energy and operating cost savings will meet or exceed the costs of the system. The contract may provide for payments over a period of time not to exceed twelve years.

E. The term of any energy performance-based contract shall expire at the end of each fiscal year but may be renewed annually up to twelve years, subject to the contracting entity making sufficient annual appropriations based upon continued realized cost savings. Such contracts shall stipulate that the agreement does not constitute a debt, liability, or obligation of the contracting entity, or a pledge of the faith and credit of the contracting entity. Such contract may also provide capital contributions for the purchase and installation of energy conservation and facility and technology infrastructure upgrades and modernization measures that cannot be totally funded by the energy and operational savings.

F. An energy performance-based contract shall include the following provisions:

1. A guarantee by the energy performance contractor that annual energy and operational cost savings will meet or exceed the amortized cost of energy conservation measures. The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed within twelve years the costs of the energy and operational savings measures. The qualified provider shall reimburse the contracting entity for any shortfall of guaranteed energy savings projected in the contract.

2. A requirement that the energy performance contractor to whom the contract is awarded provide a 100 percent performance guarantee bond to the contracting entity for the installation and faithful performance of the installed energy savings measures as outlined in the contract document.

3. A requirement that the energy performance contractor provide to the contracting entity an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall that may occur.

(2001, c. 219.)

## **INSTRUCTIONS**

1. This contract has been established by competitive negotiations for optional use by public bodies throughout the Commonwealth of Virginia. This contract provides statewide services.
2. Public bodies, where applicable, should issue a purchase order using the Division of Purchases and Supply e-procurement solution eVA, to confirm the work requirement, establish the hourly rates and/or costs and the estimated length of assignment as may be applicable. Change orders should be issued as needed. A purchase order shall be issued for the Technical Energy and Water Savings Audit and then another purchase order shall be issued based on the Energy Performance Contract.
3. Each using public body shall be responsible for administering this contract as it pertains to the services required for that public body. Each public body shall assign, and identify to the Contractors, the persons who are authorized to request personnel and services. A telephone call from the agency's authorized representative shall constitute a request for services under this contract.
4. When using this contract the public body shall be responsible for documenting the services of the Contractor and that they comply with the Technical Energy and Water Savings Audit MOU and subsequent Energy Performance Contract. This documentation shall be maintained with the purchase order for audit purposes.
5. Monitoring Contractor's performance and approval of invoice is the responsibility of the using public body. Complaints shall be documented in accordance with the Agency Procurement and Surplus Property Manual by using the Complaint to State Vendor Form. No other methods of reporting vendor complaints shall be used.
6. All services and personnel shall be provided by the Contractor. The Contractor shall provide the public body performance and payment bonds for all Energy Performance Contracts.
7. The Contractor shall be paid on the basis of invoices submitted with appropriate documentation as requested by the public body to back up the services. Invoices shall be submitted on a monthly basis. The invoice shall represent the percentage of work completed. If the public body has a dispute with the invoice, they shall process for payment the undisputed amount and notify the Contractor in writing within one week of the receipt of the invoice of the disputed part. All disputes shall be resolved within 30 days.  
It is recommended that the Construction and Professional Services Manual CO12 be the method of invoice for state agencies when work is being performed on the Energy Performance Contract.
8. Each Contractor shall assign a coordinator to handle and assist in any and all scheduling, billing and problem solving. The Contractors shall meet periodically with the public body, when requested, to discuss services.
9. The working hours will be defined by the agency or institution of higher education based on the needs.
10. The Contractor shall provide all cell phones, pagers, beepers, test and sampling equipment, cameras, computers, copiers, fax machines and transportation for the employees assigned to this contract.
11. The public body will allow for printing of specifications, drawings, minutes and other documentation as reimbursable expenses at the invoice costs. State agencies will consider reimbursable for lodging and meals if approved in advance by the Agency and included in the written MOU. Costs shall be in accordance with the Commonwealth of Virginia CAPP Manual. The Contractor shall provide personnel from the areas closest to where the work is required whenever possible. The Commonwealth does not reimburse its employees who may travel more than an hour one way to work; therefore the Commonwealth will not pay a Contractor for their employees.
12. Selection of the Contractor shall be done in the following manner:
  - o The public body shall select a minimum of 3 firms from the Quick Reference to ESCOs

spreadsheet

- The 3 firms shall be provided the Back of the Envelope Audit form with data completed by the public body
- The public body shall hold a walk through for the 3 Contractors (similar to a pre-bid conference)
- A due date for the Back of the Envelope Audit will be establish by the public body
- Once the Back of the Envelope Audits are received by the public body, the public body will review the proposals for savings, proposed ECMs, staff to be assigned and qualifications.
- The public body may select one or more Contractors to negotiate with for the Technical Energy and Water Savings Audit
- The public body shall put in writing the justification for the selection of the final Contractor
- The MOU shall be completed for the Technical Energy and Water Savings Audit
- A contract shall be written for the Energy Performance Contract
- The public body shall maintain the justification, Back of the Envelope Audit, Technical Energy and Water Savings Audit and subsequent Energy Performance Contract as the procurement record

- I. **REQUEST FOR PROPOSAL REQUIREMENTS SECTIONS** **PURPOSE:** The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations with multiple qualified Contractors to provide energy performance contracting services for public bodies of the Commonwealth of Virginia. **This will be an optional use contract.**
- II. **BACKGROUND:** The Commonwealth of Virginia and its public bodies are continually engaged in building maintenance and renovation programs in order to enhance the performance of the building systems and generate utility and operational savings. Energy performance contracting may present opportunities in a number of state facilities to benefit and create savings.

**Abbreviations and terms used in this document:**

ESCO – Energy Services Companies  
RFP – Request for Proposal  
DEB – Division of Engineering and Buildings  
BCOM – Bureau of Capital Outlay Management  
COV – Commonwealth of Virginia  
Owner – public bodies of the Commonwealth  
Offeror – potential ESCO  
Contractor - ESCO

This RFP process will qualify a group of ESCOs who may be called on to conduct technical energy audits and upgrades to public facilities, which result in energy, water, and operations savings through Guaranteed Energy Savings Performance Contracts. These Contracts will identify and implement capital improvements to reduce energy and related costs in facilities such that annual cost savings are applied to annual payments for improvements, and following the guidelines in the ***Code of Virginia, Title 11, Chapter 6.1, Sections 11-34.1 through 11-34.4.***

III. **STATEMENT OF NEEDS:**

The Statement of Needs defines the desired conditions of the contract, but does not restrict the Commonwealth or the ESCO to what is stated. The Commonwealth understands that not all ESCOs can provide all services for complex projects, therefore in fairness and in an endeavor to establish contracts with several ESCOs, ESCOs are encouraged to provide responses based on the size and types of projects they would like to perform for public bodies.

**General Requirements:**

The ESCOs that are selected agree to an initial two-year contract commitment to the Commonwealth of Virginia and that during this time they will maintain the financial where with all to perform. The ESCO shall provide all labor, materials, transportation and incidentals necessary for the performance of this contract.

The ESCO when entering into a performance contract to do an energy project shall provide a written savings guarantee that will cover one hundred percent (100%) of the total project costs. The maximum project payback period will be 12 years per the Code of Virginia.

The performance contractor shall provide a comprehensive facilities services program including:

- (a) Complete energy audits
- (b) Design and installation of energy efficiency equipment and systems
- (c) Maintenance of equipment and installed systems, in some cases
- (d) Monitoring of energy costs
- (e) Potential financing for the project
- (f) A written guarantee of energy, water, and operations savings

The Commonwealth of Virginia and its public bodies own and operate a variety of facilities across the state, including administrative buildings, health care units, correctional facilities, universities, and

community colleges

The Owner seeks to maximize energy and related cost savings in order to pay for facility upgrades and services. The services and capital improvements will be financed through an energy savings performance contract which:

- Incurs no initial capital costs (with option for the Owner to provide initial capital if desired)
- Achieves significant long-term cost savings
- Achieves a guarantee for cost savings (with the Owner option to eliminate part or all of the guarantee after three years of guaranteed performance).
- Maintains consistent and reasonable levels of occupant comfort
- Maintains consistent levels of building functionality,
- Captures additional benefits that may directly result from energy-related services and capital improvements, such as environmental protection, hazardous materials disposal or recycling, improved occupant comfort, reduced maintenance needs, improved indoor air quality, additional building improvements, etc.
- Endeavors to use ENERGY STAR<sup>SM</sup> equipment in this project.

The ESCOs will not limit its ECM recommendations to only those projects having a 12-year payback, but will give a prioritized listing of all opportunities for savings, regardless of payback. The Owner may elect to buy-down the purchase and installation costs of ECMs that cannot be totally funded by energy and operations savings. Upon the Owner's approval of the recommendations, the ESCO will implement the comprehensive energy efficiency and guaranteed savings program. Throughout this process, "energy savings" will be understood to include energy, water, and operations savings.

### **Specific Requirements:**

#### **The Process to be Utilized:**

It is important for all responding ESCOs to understand how these contracts will be utilized. The Commonwealth will establish several contracts with ESCOs that meet the qualifications requested in this proposal. Once the pool has been qualified, public bodies will follow the following process:

- A minimum of three (3) ESCOs will be contacted by the public body
- The ESCOs will provide their recommendations, schedule, projected payback schedule, and projected energy savings, short and long term to the Owner
- The Owner will choose one or more ESCOs to negotiate with to establish a contract
- The exception to this process is when an Owner has a campus wide building management system (BMS) that is sole source. In this case if the ESCO is the BMS contractor, then the Owner may sole source any improvements to the BMS. All other work outside of the BMS improvements shall be competed for at the sub contractor and material supplier level by the BMS ESCO. Competition should be sought to the greatest extent possible.

#### **Selection of the ESCO from the Group:**

- From the qualified group, three or more ESCOs will be contacted to participate in a walk-through of the proposed building and to submit the Site-Specific Approach to Project
- Based on the Site-Specific Approach submissions, an ESCO is selected and assigned to work with the Agency on this energy project after negotiations.

#### **Technical Energy Audit Phase:**

- The Owner and the ESCO sign a Technical Energy Audit Memorandum of Understanding.
- The ESCO conducts a comprehensive Technical Energy Audit. The Owner reviews the study results and determines whether or not to continue with the project.
- If the project goes forward, the energy baseline, energy savings guarantee, measurement and verification methods, and payment schedules are negotiated.
- If the project does not go forward, the Owner pays the ESCO for the Technical Energy Audit.
- The Owner enters into an Energy Savings Performance Contract to implement the selected measures.
- *If during the development of the energy audit, changes that impact code compliance and require stamped drawings are part of the work, then review by the Bureau of Capitol Management will be required on Commonwealth of Virginia projects. The ESCO should allow for this process when developing his energy audit.*

#### **Performance Contract Phase:**

- Project construction begins.
- Upon completion of construction, commissioning is conducted.
- Simultaneously, the ESCO provides training to facility maintenance/operations personnel. Training shall address the purpose, operations, and maintenance of the installed equipment/systems.

#### **Measurement & Verification Phase:**

- Annual reconciliation of actual energy savings achieved, as compared to the baseline, is conducted to determine project performance throughout the term of the contract.
- If the projected annual energy savings are not achieved, the ESCO shall pay the Owner the difference, pursuant to the savings guarantee.

#### **Specific Energy Improvements**

The Owner seeks to maximize energy, water, and operations savings and related improvements in state-owned facilities.

The ESCO must have the demonstrated technical and managerial capability to address a broad range of energy and water systems, provide a comprehensive set of related services, and capture the value of any directly related additional benefits. These include but are not limited to:

##### **Audit**

- Technical energy and water audit to evaluate costs and savings of a variety of measures
- Financial analysis
- Financing capability or ability to find financing

##### **Construction & Commissioning**

- Design services
- Equipment procurement and purchasing
- Construction management
- Installation of equipment
- Hazardous waste disposal or recycling
- Commissioning
- Staff training on routine maintenance and operations of systems



- Training of building occupants

#### Measurement and Verification

- Measurement and verification of selected energy and water savings measures, as compared to the baseline, and reporting of the performance and savings from improvements.
- Verification of operations and maintenance procedures for long-term, high-efficiency performance of buildings
- Monitoring and reporting of emissions reductions

Systems may include the following:

- Mechanical Systems. Heating, ventilating and air conditioning (HVAC) systems, energy management and controls systems, domestic hot water systems, distribution systems, etc.
- Electrical Systems. Distribution systems, emergency generators.
- Lighting Systems. Indoor and outdoor lighting systems, lighting controls, day lighting strategies.
- Building Envelope Systems. Windows, insulation, weatherization, etc. It is recognized that window replacements are rarely cost-effective, but could be considered as part of a comprehensive plan.
- Specialty Systems. Laundry and kitchen equipment, renewable energy systems.
- Water and Sewage Systems. Automatic controls, low-flow faucet aerators, low-flow toilets, cooling tower modifications, and irrigation system controls or modifications.

## **REQUIRED GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES**

- A. VENDORS MANUAL
- B. APPLICABLE LAWS AND COURTS
- C. ANTI-DISCRIMINATION
- D. ETHICS IN PUBLIC CONTRACTING
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. CHANGES TO THE CONTRACT
- P. DEFAULT
- Q. TAXES
- R. USE OF BRAND NAMES
- S. TRANSPORTATION AND PACKAGING
- T. INSURANCE
- U. ANNOUNCEMENT OF AWARD
- V. DRUG FREE WORKPLACE
- W. NONDISCRIMINATION OF CONTRACTORS
- X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 11-51 of the Virginia Public Procurement Act.

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- 1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of

the contractor, will state that such contractor is an equal opportunity employer.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder supplier, manufacturer or subcontractor in connection with their bid and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bids, bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**  
**(Insert wording below appropriate to the solicitation type as indicated):**
  1. (For Invitation For Bids:) Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
  2. (For Request For Proposals:) Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
  1. To Prime Contractor:
    - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall

show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations). b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 11-69).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

K. **PRECEDENCE OF TERMS:** Paragraphs A-J of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified

to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the

public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the

Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product offered is an equal product, such bid will be considered to offer the brand name product referenced in the solicitation.

- S. **TRANSPORTATION AND PACKAGING:** By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder certifies that if awarded the contract, it will have the following insurance coverage's at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the Code of Virginia. The bidder further certifies that the contractor and any subcontractors will maintain these insurance coverage's during the entire term of the contract and that all insurance coverage's will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

1. Worker's Compensation - Statutory requirements and benefits; require that the Commonwealth of Virginia be added as an additional named insured on contractor's policy.
  2. Employers Liability - \$100,000.
  3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
  4. Automobile Liability - \$500,000 - Combined single limit.
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the Bulletin Board located at 215 Governor Street for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,

dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

- a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.
- b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.
- c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

Note: Vendors are strongly encouraged to register your company prior to submitting a bid or offer. Failure to register will result in your bid or offer being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems. of the contract.

## **SPECIAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES**

1. ADVERTISING
2. AUDIT
3. AVAILABILITY OF FUNDS
4. CANCELLATION OF CONTRACT
6. PRICE ESCALATION/DE-ESCALATION
7. PRIME CONTRACTOR RESPONSIBILITIES
8. RENEWAL OF CONTRACT
9. SUBCONTRACTS
10. eVA Transaction Fee
11. Trading Partner Agreement
12. PERFORMANCE AND PAYMENT BONDS

**1. ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the (name of institution) will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.

**2. AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

**3. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

**4. CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

**6. PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted only for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: CPI for services. No price increases will be authorized for 365 calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the purchasing office. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth. Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the contractor by the contractor's suppliers. The purchasing office will notify the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

**7. PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his



subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

**8. RENEWAL OF CONTRACT:** (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation. Select one of the following clauses if an option to renew the contract beyond the original period of the contract is desired. Select either "one year" or complete the blank, indicating the number of "successive one year periods" the contract may be renewed.)

**A. RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for (four successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

**9. SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

**10. eVA Transaction Fee:** Purchase orders processed through the eVA procurement system will be subject to an eVA transaction fee of 1%, not to exceed \$500 per order. This fee will be invoiced to vendors by American Management Systems (DGS/DPS&#8217; eVA e-procurement solution partner).

**11. Trading Partner Agreement:** If a vendor has not previously executed a Trading Partner Agreement with American Management Systems (AMS), and receives an order through the eVA procurement system shall, within 5 calendar days after receipt of award notification, submit a fully executed AMS Trading Partner Agreement. A copy of this agreement can be accessed and downloaded from the following web site: [www.eva.state.va.us](http://www.eva.state.va.us).

**12. PERFORMANCE AND PAYMENT BONDS:** The successful bidder shall deliver to the purchasing office executed Commonwealth of Virginia Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with the Commonwealth of Virginia as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the purchasing office. Standard bond forms will be provided by the purchasing office prior to or at the time of award.

**To be used as needed. These are provided for the projects that will involve building automation systems that may require servers and operating software and/or other information technology equipment.**

## **SPECIAL TERMS AND CONDITIONS INFORMATION TECHNOLOGY GOODS AND SERVICES**

1. CERTIFICATION TESTING PERIOD (SYSTEM / HARDWARE)
2. CONFIDENTIALITY
3. DEFINITIONS
4. DEMONSTRATIONS
5. EQUIPMENT ENVIRONMENT
6. EXCESSIVE DOWNTIME
7. LATEST SOFTWARE VERSION
8. LIMITATION OF USE
9. MAINTENANCE
10. NEW EQUIPMENT
11. OPERATIONAL COMPONENTS
12. OWNERSHIP OF INTELLECTUAL PROPERTY
13. PRODUCT SUBSTITUTION
14. QUALIFIED REPAIR PERSONNEL
15. RELOCATION OF EQUIPMENT
16. RENEWAL OF MAINTENANCE
17. REPAIR PARTS
18. SERVICE PERIOD (EXTENDED)
19. SERVICE PERIOD (ROUTINE)
20. SERVICE REPORTS
21. SOFTWARE UPGRADES
22. SOFTWARE DISPOSITION
23. SOURCE CODE
24. TERM OF SOFTWARE LICENSE
25. THIRD PARTY ACQUISITION OF SOFTWARE
26. TITLE TO SOFTWARE
27. WARRANTY AGAINST SHUTDOWN DEVICES
28. WARRANTY OF SOFTWARE
29. YEAR 2000 COMPLIANT (AND ENABLEMENT) WARRANTY
30. NONVISUAL ACCESS TO TECHNOLOGY

1. **CERTIFICATION TESTING PERIOD - SYSTEMS:** The system specified in the contract shall be considered ready for testing upon receipt of documentation from the contractor that a successful system audit or diagnostic test was performed at the site demonstrating that the system meets the minimum design/performance capabilities stipulated in the purchase agreement. The \_\_\_\_day testing period shall commence on the next calendar day following receipt of this documentation. Upon request, the procuring agency will provide written confirmation of its acceptance following successful completion of the certification period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

**CERTIFICATION TESTING PERIOD - HARDWARE:** Equipment ordered herein shall be subject to inspection and a 30-day testing period by the procuring agency. Contractor equipment which is found to not meet the specifications or other requirements of the purchase agreement may be rejected and returned to the vendor at no cost (including return transportation) by the procuring agency. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

2. **CONFIDENTIALITY (Commonwealth):** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom

of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.

**CONFIDENTIALITY (Contractor):** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

3. **DEFINITION - EQUIPMENT:** As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

**DEFINITION - SOFTWARE:** As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

4. **DEMONSTRATIONS:** By submitting a bid or proposal, the bidder or offeror certifies that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The Commonwealth reserves the right to require bidders or offerors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor's products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their bid being rejected. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.
5. **EQUIPMENT ENVIRONMENT:** Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.
6. **EXCESSIVE DOWNTIME:** Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of in operability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than \_\_ consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within \_\_days following the request for replacement.
7. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
8. **LIMITATION OF USE:** The Commonwealth's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another Commonwealth site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the Commonwealth's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the Commonwealth, the contractor's sole remedy shall be to pursue a monetary claim in accordance with § 2.2-4363 of the *Code of Virginia*.

9. **MAINTENANCE:** Upon expiration of the specified warranty period and at the Commonwealth's option, the contractor shall provide up to \_\_\_\_ additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed. Each successive year of maintenance may be ordered by the Commonwealth in writing at least \_\_\_\_ days prior to expiration of the existing maintenance period.
10. **NEW EQUIPMENT:** Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment.
11. **OPERATIONAL COMPONENTS:** Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.
12. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
13. **PRODUCT SUBSTITUTION:** During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
14. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Commonwealth reserves the right to require proof of certification prior to award and at any time during the term of the contract.
15. **RELOCATION OF EQUIPMENT:** Should it become necessary to move equipment covered by the contract to another location, the Commonwealth reserves the right to do so at its own expense. If contractor supervision is required, the Commonwealth will provide prior written notice of the move at least thirty (30) days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the Commonwealth. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.
16. **RENEWAL OF MAINTENANCE:** Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional \_\_\_\_ one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the \_\_\_\_\_ category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.
17. **REPAIR PARTS:** In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the Commonwealth.
18. **SERVICE PERIOD (EXTENDED):** Due to the criticality of the applications for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support,

including state holidays. On-site response time shall be within \_\_\_\_ hours following initial notification. All necessary repairs or corrections shall be completed within \_\_\_\_ hours of the initial notification.

19. **SERVICE PERIOD (ROUTINE)**: Contractor shall provide 24 hour toll-free phone support with a \_\_\_\_ hour return call response time. On-site maintenance services shall carry a \_\_\_\_ hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within \_\_\_\_ hours of the initial notification.
20. **SERVICE REPORTS**: Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.
21. **SOFTWARE UPGRADES**: The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
22. **SOFTWARE DISPOSITION**: Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty (30) days of termination of its license, except that the Commonwealth does reserve the right to retain one copy of the software for archival purposes when appropriate.
23. **SOURCE CODE**: In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Commonwealth shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty (20) years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.
24. **TERM OF SOFTWARE LICENSE**: Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.
25. **THIRD PARTY ACQUISITION OF SOFTWARE**: The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.
26. **TITLE TO SOFTWARE**: By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
27. **WARRANTY AGAINST SHUTDOWN DEVICES**: The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
28. **WARRANTY OF SOFTWARE**: The contractor warrants the operation of all software products for a period

of \_\_\_\_ months from the date of acceptance. During the warranty period, the contractor shall provide hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within \_\_\_\_ hours of initial notification.

29. **YEAR 2000 COMPLIANT (AND ENABLEMENT) WARRANTY:** The contractor warrants that all software, firmware and hardware product(s) delivered to the Commonwealth of Virginia under any agreement, and which is used in accordance with the product documentation provided by the contractor, shall be 4-digit Year 2000 compliant (or approved enabled). All products shall accurately process all date-change data from start to finish, including, but not limited to, twentieth, twenty-first centuries and leap year calculations.

Any product provided under this Agreement discovered not to be compliant after acceptance shall be corrected by the contractor at no additional cost to the Commonwealth. Failure to correct the deficiency shall subject the contractor to default action.

The contractor shall not be responsible for correcting any product(s) (e.g., hardware, software, firmware) which were not provided under this agreement or for correcting any previously owned Commonwealth products that are used in combination with the contractor's product(s); however, if this solicitation identifies any product or sources of data to be used in combination with the product(s) delivered under the resulting agreement, the contractor shall be responsible for providing all necessary interface(s) or other appropriate means for assuring that date data output from such other product(s) or source(s) is automatically corrected before being processed by the product(s) or system provided under this agreement.

30. **NONVISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this agreement:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
- (iii) Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the Technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

## ADDITIONAL TERMS AND CONDITIONS FOR NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS

Any project that meets the criteria of a Capital Outlay project as defined in Chapter 10 of the Construction and Professional Services Manual shall comply with the CO7 Terms and Conditions for construction.

1. DEFINITIONS
2. CONTRACT DOCUMENTS
3. LAWS AND REGULATIONS
4. PREPARATION AND SUBMISSION OF BIDS
5. WITHDRAWAL OR MODIFICATION OF BIDS
6. RECEIPT AND OPENING OF BIDS
7. ERRORS IN BIDS
8. SUBCONTRACTS
9. SEPARATE CONTRACTS
10. TAXES
11. PATENTS
12. INSPECTION
13. SUPERINTENDENCE BY CONTRACTOR
14. ACCESS TO WORK
15. AVAILABILITY OF MATERIALS
16. CONTRACTOR'S TITLE TO MATERIALS
17. WARRANTY OF MATERIALS AND WORKMANSHIP
18. USE OF PREMISES AND REMOVAL OF DEBRIS
19. PROTECTION OF PERSONS AND PROPERTY
20. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT
21. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE
22. TERMINATION BY OWNER FOR CONVENIENCE
23. GUARANTEE OF WORK
24. ASBESTOS
25. TRAINING, OPERATION, AND MAINTENANCE OF EQUIPMENT

1. **DEFINITIONS:** Whenever used in this solicitation or in the contract documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:
  - (a) **Agency:** The term, agency, unless otherwise indicated, shall mean the owner.
  - (b) **Commonwealth:** The term "Commonwealth" shall mean the owner which is the Commonwealth of Virginia through the governing Body, the Board, the Building Committee or other agent with authority to execute the contract for the institution or agency involved. The Commonwealth's agent is the official with the authority to sign the contract on behalf of the Commonwealth.
  - (c) **Construction:** As used in these documents shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the Commonwealth and any draining, dredging, excavation, grading, or similar work upon real property.
  - (d) **Contractor:** The person, firm or corporation with whom the owner has entered into a contractual agreement and includes the plural number and the feminine gender when such are named in the contract as the contractor.
  - (e) **Defective:** An adjective which when modifying the word work, refers to work that is unsatisfactory, faulty, or deficient, or does not conform to the contract documents, or does not meet the requirements of any inspections, standard, test, or approval referred to in the contract documents, or has been damaged prior to final payment.
  - (f) **Emergency:** Any unforeseen combination of circumstances or a resulting state that poses imminent danger to health, life, or property.

- (g) **Final Acceptance:** The agency's acceptance of the project from the contractor upon confirmation from the project inspector and the contractor that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the contract amount including any change orders or adjustment thereto.
- (h) **Notice:** All written notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with the contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox.
- (i) **Notice to Proceed:** A written notice given by the owner to the contractor fixing the date on which the contract time will commence for the contractor to begin the prosecution of the work in accordance with the requirements of the contract documents.
- (j) **Owner:** The Commonwealth of Virginia, i.e., an agency, institution, or department, with whom the contractor has entered into a contract and for whom the work or services is to be provided.
- (k) **Project Inspector:** One or more individuals employed by the owner to inspect the work and/or to act as clerk of the works to the extent required by the owner. The owner shall notify the contractor in writing of the appointment of such project inspector(s).
- (l) **Provide:** Shall mean furnish and install ready for its intended use.
- (m) **Submittal:** All drawings, diagrams, illustrations, schedules, and other data required by the contract documents which are specifically prepared by or for the contractor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a supplier and submitted by the contractor to illustrate material or equipment for some portion of the work.
- (n) **Subcontractor:** An individual, partnership or corporation having a direct contract with contractor or with any other subcontractor for the performance of the work. It includes one who provides on-site labor but does not include one who only furnishes or supplies materials for the project.
- (o) **Substantial Completion:** The work which is sufficiently complete, in accordance with the contract documents, so that the project can be utilized by the owner for the purposes for which it is intended.
- (p) **Supplier:** A manufacturer, fabricator, distributor, materialman, or vendor who provides material for the project but does not provide on-site labor.
- (q) **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone, or other communications, cable television, sewage and drainage removal, traffic, or other control systems or water.
- (r) **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the contract documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the contract documents.

## 2. **CONTRACT DOCUMENTS:**

- (a) The contract entered into by the parties shall consist of the Invitation for Bids, the bid submitted by the contractor; General Terms and Conditions, these Additional Terms and Conditions; the Special



Terms and Conditions; the drawings, if any; the specifications; and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the contract documents.

- (b) All time limits stated in the contract documents, including but not limited to the time for completion of the work, are of the essence of the contract.
- (c) Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

3. **LAWS AND REGULATIONS:**

- (a) The contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work and shall give all notices required thereby.
- (b) This contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, *Code of Virginia*, relating to labor unions and the "right to work." The contractor and its subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the said provisions.
- (c) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract. Inspectors from the Department of Labor and Industry shall be granted access to the work for inspection without first obtaining a search warrant from the court.
- (d) Building Permit: Because this is a project of the Commonwealth of Virginia, codes or zoning ordinances of local political subdivisions do not apply. Building permits where required will be obtained and paid for by the owner. This does not include any local license fees, business fees or similar assessments which may be imposed by the appropriate political subdivision.
- (e) The contractor, if not licensed as an asbestos abatement contractor or a RFS contractor in accordance with § 54.1-514, *Code of Virginia*, shall have all asbestos related work performed by subcontractors who are duly licensed as asbestos contractors or RFS contractors as appropriate for the work required.

4. **PREPARATION AND SUBMISSION OF BIDS:** Bids must give the full business address of the bidder and be signed by him/her with his/her usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to the signature the word "President," "Secretary," "Agent" or other designation without disclosing the principal, may be held to be the bid of the individual signing. When requested by the Commonwealth, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

5. **WITHDRAWAL OR MODIFICATION OF BIDS:** Bids may be withdrawn or modified by written notice received from bidders prior to the deadline fixed for bid receipt. The withdrawal or modification may be made by the person signing the bid or by an individual(s) who is authorized by him/her on the face of the bid. Written modifications may be made on the bid form itself, on the envelope in which the bid is enclosed, or on a separate document. Written modifications, whether the original is delivered, or transmitted by facsimile, must be signed by the person making the modification or withdrawal.

6. **RECEIPT AND OPENING OF BIDS:**

- (a) It is the responsibility of the bidder to assure that his/her bid is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. Bids received after the time designated for receipt of bids will not be considered.
  - (b) Bids will be opened at the time and place stated in the advertisement, and their contents made public for the information of bidders and others interested who may be present either in person or by representative. The officer or agent of the owner, whose duty it is to open them, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.
  - (c) The provisions of § 2.2-4342 of the *Code of Virginia*, as amended, shall be applicable to the inspection of bids received.
7. **ERRORS IN BIDS:** Errors in bids will be handled in accordance with section 5.13 of the *Vendors Manual*.
8. **SUBCONTRACTS:**
- (a) The contractor shall as soon as practicable after the signing of the contract, notify the owner in writing of the names of subcontractors proposed for the principal parts of the work. The contractor shall not employ any subcontractor that the owner may, within a reasonable time, object to as unsuitable. The owner will not direct the contractor to contract with any particular subcontractor unless provided in the specifications or bid form.
  - (b) The owner shall, on request, furnish to any subcontractor, if practicable, the amounts of payments made to the contractor, the Schedule of Values and Requests for Payment submitted by the contractor, and any other documentation submitted by the contractor which would tend to show what amounts are due and payable by the contractor to the subcontractor.
  - (c) The contractor agrees that he is as fully responsible to the owner for the acts and omissions of his subcontractors, suppliers, and invitee upon the site of the project and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
9. **SEPARATE CONTRACTS:**
- (a) The owner reserves the right to let other contracts in connection with the project, the work under which may proceed simultaneously with the execution of this contract. The contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The contractor shall cooperate with them and shall take all reasonable action to coordinate his work with theirs. If the owner has listed other separate contracts in the Invitation for Bids which it expects to proceed simultaneously with the work of the contractor, and has included the estimated timing of such other contracts in the Invitation for Bids, the contractor shall integrate the schedule of those separate contracts into his scheduling. The contractor shall make every reasonable effort to assist the owner in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent this contractor from carrying out his work according to the drawings and specifications of this contract, this contractor shall immediately notify the owner upon discovering such conditions.
  - (b) If a dispute arises between the contractor and separate contractors as to their responsibility for cleaning up as required by Sections 18(c) and 18(d) of these Additional Terms and Conditions, the owner may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a contractor disputes the owner's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.
10. **TAXES:** The contractor shall, without additional expense to the owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees, and assessments on the real property comprising the site of the project. If the State Building Official elects to have the local building official inspect the work as provided by § 36-98.1 of the *Code of Virginia*, the owner will pay the resulting fees to the local building official.
11. **PATENTS:** The contractor shall obtain all licenses necessary to use any invention, article, appliance,

process, or technique of whatever kind and shall pay all royalties and license fees. The contractor shall hold and save the owner, its officers, agents, and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the contract, including its use by the owner, unless such invention, process, technique, article, or appliance is specifically named in the specifications or drawings as acceptable for use in carrying out the work. If, before using any invention, process, technique, article, or appliance specifically named in the specifications or drawings as acceptable for use in carrying out the work, the contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the owner. The owner may direct that some other invention, process, technique, article, or appliance be used. Should the contractor have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fail to inform the owner, he shall be responsible for any loss due to the infringement.

12. **INSPECTION:**

- a. All material and workmanship shall be subject to inspection, examination, and test by the owner and its project inspector at any and all times during construction. The project inspector shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the contractor shall promptly segregate and remove the rejected material from the premises. If the contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the contractor, or may terminate the right of the contractor to proceed, the contractor and surety being liable for any damages.
- b. Job-site inspections, tests conducted on site or tests of materials gathered on site, which the contract requires to be performed by independent testing entities, shall be contracted and paid for by the owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings, and steel framing connections. Although conducted by independent testing entities, the owner will not contract and pay for tests or certifications of materials, manufactured products, or assemblies which the contract, codes, standards, etc. require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual, or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the contractor. The contractor shall also pay for all inspections, tests, and certifications which the contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The contractor shall promptly furnish, without additional charge, all reasonable facilities, labor, and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment, or workmanship, the contractor shall reimburse the owner for the cost of re-examination and retesting.
- c. Should it be considered necessary or advisable by the owner at any time before final acceptance of the entire work to make an examination of any part of the work already completed, by removing or tearing out portions of the work, the contractor shall on request promptly furnish all necessary facilities, labor and material to expose the work to be tested to the extent required. If such work is found to be defective in any respect, due to the fault of the contractor or his subcontractors, he shall defray all the expenses of uncovering the work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of the contractor's labor and material necessarily involved in uncovering the work, the cost of examination and testing, and contractor's cost of material and labor necessary for replacement shall be paid to the contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time.
- d. The project inspector will recommend to the owner that the work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the owner. The cost of any such work stoppage shall be borne by the contractor unless it is later determined that no fault existed in the contractor's work.

- e. The project inspector has no authority to and shall not:
  - (1) Authorize deviations from the contract documents;
  - (2) Enter into the area of responsibility of the contractor's superintendent;
  - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the work;
  - (4) Authorize or suggest that the owner occupy the project, in whole or in part;
  - (5) Issue a certificate for payment.

13. **SUPERINTENDENCE BY CONTRACTOR:**

- a. The contractor shall have a competent foreman or superintendent, satisfactory to the owner, on the job site at all times during the progress of the work. The contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures for coordinating all portions of the work under the contract except where otherwise specified in the contract documents, and for all safety and worker health programs and practices. The contractor shall notify the owner, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.
- b. The contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the work any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the contractor, the subcontractors, the owner or the owner's separate contractors and their subcontractors.
- c. The owner may, in writing, require the contractor to remove from the work any employee the owner deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

14. **ACCESS TO WORK:** The owner, the owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the work at all times. The contractor shall provide proper facilities for access and inspection.

15. **AVAILABILITY OF MATERIALS:** If material specified in the contract documents is not available on the present market, alternate materials may be proposed by the contractor for approval of the owner.

16. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The contractor warrants that he has clear title to all materials and supplies which he uses in the work or for which he accepts payment in whole or in part.

17. **WARRANTY OF MATERIALS AND WORKMANSHIP:**

- a. The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.
- b. Work not conforming to these warranties shall be considered defective.
- c. This warranty of materials and workmanship is separate and independent from and in addition to any of the contractor's other guarantees or obligations in this contract.

18. **USE OF PREMISES AND REMOVAL OF DEBRIS:**

- a. The contractor shall:
  - (1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any contractor;
  - (2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor; and
  - (3) Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
- b. The contractor expressly undertakes, either directly or through his subcontractor(s), to effect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the owner, not to cut or otherwise alter the work of any other contractor. The contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.
- c. The contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.
- d. The contractor expressly undertakes, either directly or through his subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the contract; and to thoroughly clean all glass installed under the contract including the removal of all paint and mortar splatters and other defacements. If a contractor fails to clean up at the completion of the work, the owner may do so and charge for costs thereof to the contractor.
- e. During and at completion of the work, the contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the *Virginia Erosion and Sediment Control Handbook*, latest edition, and of the contract documents.
- f. The contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the owner. The contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the owner.

19. **PROTECTION OF PERSONS AND PROPERTY:**

- a. The contractor expressly undertakes, both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the contractor's operation in connection with the work.
- b. The contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
- c. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract.
- d. The contractor shall continuously maintain adequate protection of all his work from damage and shall protect the owner's property from injury or loss arising in connection with this contract. He shall make

good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. He shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority, local conditions, any of the contract documents or erected for the fulfillment of his obligations for the protection of persons and property.

- e. In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the contractor, without special instruction or authorization from the owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the contractor on account of any emergency work shall be determined as provided by paragraph O, of the General Terms and Conditions.

20. **CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT:** If the work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the contractor or of anyone employed by him, or if the owner should fail to pay to the contractor within thirty (30) days when no dispute exists as to the sum, then the contractor may, upon ten (10) calendar days written notice to the owner, stop work or terminate the contract and recover from the owner payment for the cost of the work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the contractor can demonstrate that he would have had profit on the entire contract if he had completed the work. The contractor may not receive profit or any other type of compensation for parts of the work not performed. The contractor may recover the cost of physically closing down the job site, but no other costs of termination. The owner may offset any claims it may have against the contractor against the amounts due to the contractor. In no event shall termination of the contract by the contractor terminate the obligations of the contractor's surety on its payment and performance bonds.

21. **OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE:**

- a. If the contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the owner may terminate the contract. If the contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregards laws, ordinances, or the written instructions of the owner, or otherwise be guilty of a substantial violation of any provision of the contract, then the owner may terminate the contract.
- b. Prior to termination of the contract, the owner shall give the contractor and his surety ten (10) calendar days written notice, during which the contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the owner within said ten (10) days, the owner may rescind his notice of termination. If it does not, the termination for cause shall become effective at the end of the ten-day (10) notice period. In the alternative, the owner may postpone the effective date of the termination notice, at his sole discretion, if he should receive reassurances from the contractor and/or its surety that the causes of termination will be remedied in a time and manner which the owner finds acceptable. If at any time more than ten (10) days after the notice of termination, the owner determines that contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the owner may immediately terminate the contract for cause by giving written notice to the contractor and its surety. In no event shall termination for cause terminate the obligations of the contractor's surety on its payment and performance bonds.
- c. Notice of terminations, whether initial or given after a period of postponement, may be served upon the contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

- d. Upon termination of the contract, the owner shall take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case the contractor shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the contractor shall pay the difference to the owner, together with any other expenses of terminating the contract and having it completed by others.
- e. If it should be judicially determined that the owner improperly terminated this contract for cause, then the termination shall be deemed to be a termination for the convenience of the owner.
- f. Termination of the contract under this section is without prejudice to any other right or remedy of the owner.

**22. TERMINATION BY OWNER FOR CONVENIENCE:**

- a. Owner may terminate this contract at any time without cause, in whole or in part, upon giving the contractor notice of such termination. Upon such termination, the contractor shall immediately cease work and remove from the project site all of its labor forces and such of its materials as owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the contractor shall take such steps as owner may require to assign to the owner the contractor's interest in all subcontracts and purchase orders designated by owner. After all such steps have been taken to owner's satisfaction, the contractor shall receive as full compensation for termination and assignment the following:
  - (1) All amounts then otherwise due under the terms of this contract,
  - (2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
  - (3) Reasonable compensation for the actual cost of demobilization incurred by the contractor as a direct result of such termination. The contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, owner shall have no further obligations to the contractor of any nature.
- b. In no event shall termination for the convenience of the owner terminate the obligations of the contractor's surety on its payment and performance bonds.

**23. GUARANTEE OF WORK:**

- a. Except as otherwise specified, all work shall be guaranteed by the contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the owner.
- b. If, within the guarantee period, defects are noticed by the owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the owner rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the contractor shall, promptly upon receipt of notice from the owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the owner:
  - (1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;

- (2) Make good all damage to the structure, site, equipment, or contents thereof, which is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contracts; and
- (3) Make good any work, materials, equipment, contents of structures, and/or disturbance of the site in fulfilling any such guarantee.
- c. In any case, where in fulfilling the requirements of the contract or any guarantee embraced in or required thereby, the contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.
- d. If the contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the owner may have the defects corrected and the contractor and his surety shall be liable for all expense incurred.
- e. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the term of this section during the first year of the life of such special guarantee.
- f. Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the contractor might have under the contract documents, including liability for defective work under Section 17 of these additional terms and conditions. This paragraph relates only to the specific obligation of the contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the contract documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the contractor's liability with respect to his other obligations under this contract.
- g. In the event the work of the contractor is to be modified by another contractor, either before or after the final inspection, the first contractor shall remain responsible in all respects under the guarantee of work and under any other warranties provided in the contract or by law. However, the contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying its work. Both the first contractor and the contractor making the modifications shall each be responsible solely for the work done by each. The contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which he is modifying. If any contractor shall claim that another contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other contractor. Any contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the contractor whose work he is modifying.

24. **ASBESTOS:**

- a. This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the work. If the contractor discovers or inadvertently disturbs any material that may contain asbestos that has not been previously identified, that was overlooked during the removal, or which was deemed not to be friable or which was encapsulated, the contractor shall stop work in the area containing the asbestos, secure the area, and notify the owner immediately by telephone or in person with written notice as soon as possible. The owner will have the suspect material sampled.

If the sample is positive and must be disturbed in the course of the work, the owner will have the material repaired or removed and will pay for the bulk sample analysis.

If the material disturbed is not within the contractor's authorized work and/or work area or under this contract, the contractor will pay for all associated sampling and abatement costs.

- b. If asbestos abatement is included as a part of the work, the contractor shall assure that the asbestos abatement work is accomplished by those duly licensed in accordance with the specific requirements of the contract documents.



- c. If asbestos abatement is included as part of the work, the licensed asbestos subcontractor shall, in the insurance required, name the Commonwealth of Virginia and the contractor as additional insured.

25. **TRAINING, OPERATION, AND MAINTENANCE OF EQUIPMENT:**

- a. The contractor, in conjunction with his subcontractors and suppliers, shall provide the owner's operations and maintenance personnel with instruction and training in the proper operation and maintenance of the equipment and related controls provided or altered in the work.
- b. The contractor shall provide the owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment provided in the project. Further specific requirements may be indicated in the specifications.